

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT THOMAS,

Petitioner,

-v-

SUPERINTENDENT WOLCOTT,

Respondent.

ORDER

6:20-CV-6369 EAW

Robert Thomas (“Petitioner”), acting *pro se*, commenced this proceeding pursuant to 28 U.S.C. § 2254 while he was detained in Respondent’s custody and awaiting trial in a civil commitment proceeding brought under New York Mental Hygiene Law (“M.H.L.”) Article 10. (*See* Dkt. 1 (petition); Dkt. 8 (amended petition)).

On June 17, 2024, the Court issued a Decision and Order (Dkt. 43) stating that it was construing two letters filed by Petitioner (Dkt. 38; Dkt. 41) as a request under Federal Rule of Civil Procedure (“Rule”) 41(a)(2)¹ to dismiss the amended petition voluntarily and without prejudice. (Dkt. 43 at 5-6). The Court noted that Respondent did not oppose voluntary dismissal of the amended petition. (*Id.* at 7).

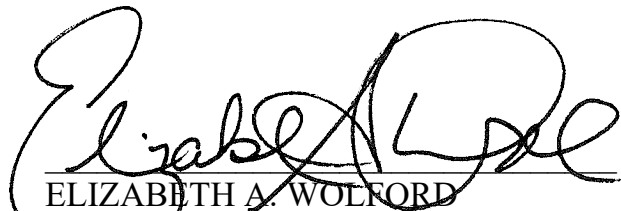
¹ The Federal Rules of Civil Procedure may be applied to a proceeding under 28 U.S.C. § 2254 “to the extent that they are not inconsistent with any statutory provisions or th[e] [R]ules [Governing Section 2254 Proceedings in the United States District Courts].” Rule 12, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C.A. foll. § 2254.

The Court then outlined the two procedural options available to Petitioner—either proceed to judgment on the amended petition or voluntarily withdraw the petition without prejudice under Rule 41(a)(2). (*Id.* at 7-9). To ensure that Petitioner did not inadvertently forfeit important rights, the Court afforded him one final opportunity to indicate how he wished to proceed. (*Id.* at 9).

By letter dated July 1, 2024 (Dkt. 44), Petitioner timely responded and stated, in relevant part, as follows: “I[,] Mr. Robert Thomas, the PETITIONER WITHDRAW amen[]d PETITION VOLU[N]TARILY UNDER RULE-41(a)(2).” (Dkt. 44 at 1 (capital letters in original)). The foregoing statement by Petitioner confirms that he wishes to withdraw his amended petition (Dkt. 8) voluntarily and without prejudice under Rule 41(a)(2).

Accordingly, the Court grants Petitioner’s request to withdraw (Dkt. 38; Dkt. 41; Dkt. 44) the amended petition (Dkt. 8) voluntarily under Rule 41(a)(2). The amended petition (Dkt. 8) is dismissed without prejudice. The Clerk of Court is directed to close this case and enter judgment in Respondent’s favor.

SO ORDERED.



ELIZABETH A. WOLFORD
Chief Judge
United States District Court

Dated: July 11, 2024
Rochester, New York